

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

ALL DISCOUNT TIRES INC.,

§

§

Plaintiff,

§

§

v.

§

CIVIL ACTION NO.

UNION INSURANCE COMPANY,

§

§

Defendant.

§

**DEFENDANT UNION INSURANCE
COMPANY'S NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Union Insurance Company (“Union”) respectfully petitions this Court for removal of the above-entitled action to the United States District Court for the Northern District of Texas from the 153rd Judicial District Court of Tarrant County, Texas, and for its Notice of Removal states:

I.
PROCEDURAL HISTORY

1. This action, entitled *All Discount Tires Inc. v. Union Insurance Company* pending in the 153rd Judicial District Court of Tarrant County, Texas, Cause No. 153-291463-17 was commenced against Defendant via the filing of Plaintiff's Original Petition on or about April 7, 2017.¹ Plaintiff's Original Petition contained a jury demand.²

¹ Plaintiff's Original Pet.

² *Id.* at page 12.

2. In its Petition, Plaintiff asserts claims for breach of contract, violations of the Texas Insurance Code including unfair settlement practices and prompt payment of claims, bad faith, misrepresentation, and breach of common law duty of good faith and fair dealing.³

3. Plaintiff only named Union as a defendant.⁴

4. Union received the citation and Plaintiff's Original Petition via service on May 16, 2017.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed state court action is pending.

II. REMOVAL IS TIMELY

6. This Notice of Removal is filed within thirty (30) days of receipt of the first service of the Original Petition on Union, and is therefore timely filed under 28 U.S.C. § 1446(b).

III. CITIZENSHIP OF THE PARTIES

7. Plaintiff's Original Petition establishes that the United States District Court for the Northern District of Texas, Fort Worth Division, has jurisdiction by reason of the diversity of citizenship of the parties.

8. According to its Original Petition, Plaintiff resides in Tarrant County, Texas.⁵ For purposes of removal, it must therefore be presumed that Plaintiff is now, and was at the time this action was commenced, a citizen of Texas.

³ *Id.* at pages 4-8.

⁴ *Id.*

⁵ *Id.* at page 1.

9. Defendant Union is an insurance corporation organized under the law of the State of Iowa with its principal place of business in Iowa. Therefore, Union is now, and was at the time this action was commenced, a citizen of Iowa. Thus, removal is proper because there is complete diversity between the parties under 28 U.S.C. § 1332.

IV. AMOUNT IN CONTROVERSY

10. Plaintiff's Original Petition indicates that it seeks monetary relief over \$200,000.00.⁶ Plaintiff seeks actual damages, consequential damages, compensatory damages, additional damages, statutory interest under the Prompt Pay Act, pre-judgment and post-judgment interest, exemplary damages, costs of court and attorneys' fees.⁷

11. Accordingly, it is "facially apparent" that Plaintiff's claims exceed \$75,000.00, which is all that is required to satisfy the amount-in-controversy requirement.⁸

12. Moreover, Plaintiff also seeks to recover treble damages because it asserts Union's violation of the Texas Insurance Code was committed knowingly.⁹

13. Therefore, it is clear that the amount in controversy exceeds the minimal jurisdictional requirements of the Court as set forth in 28 U.S.C. § 1332(a).

V. ORIGINAL JURISDICTION

14. Because there exists diversity of jurisdiction between the Plaintiff and Union, and the amount in controversy exceeds the minimal jurisdictional requirements, this Court has

⁶ *Id.* at page 11.

⁷ *Id.* at page 8-16.

⁸ See *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

⁹ Plaintiff's Original Pet. at page 8.

original jurisdiction of this case pursuant to 28 U.S.C. § 1332(a)(1). Accordingly, Union removes the action as a matter of right under 28 U.S.C. § 1441.

VI.
NOTICE TO STATE COURT

15. Union has given notice of this removal to the 153rd District Court of Tarrant County, Texas.

16. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Union demands a trial by jury.

VII.
ATTACHMENTS

17. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1 of the Northern District of Texas, Defendant has attached to this Notice of Removal an appendix containing: (a) an index of all documents filed in the state-court action that clearly identifies each document and indicates the date the document was filed; (b) a copy of the docket sheet in the state-court action; and (c) a copy of all process, pleadings and orders served upon such defendant in such action and each document filed in such action, except discovery material; and (d) a separately signed certificate of interested persons.

VIII.
CONSENT OF ALL PARTIES

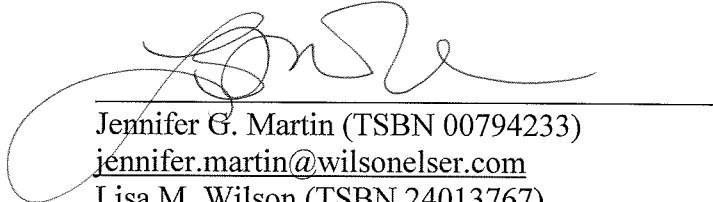
18. Union, the sole defendant served at the time of the removal, consents to the removal of the action to this Court.

IX.
CONCLUSION

19. Pursuant to 28 U.S.C. § 1446(a), Defendant removes the state action *All Discount Tires Inc. v. Union Insurance Company*, Cause No. 153-291463-17, to the United States District

Court for the Northern District of Texas, Fort Worth Division based on diversity jurisdiction. Union requests the matter be retained on the Court's docket. Union further requests any additional relief to which it may be justly entitled.

Respectfully submitted,



Jennifer G. Martin (TSBN 00794233)
jennifer.martin@wilsonelser.com

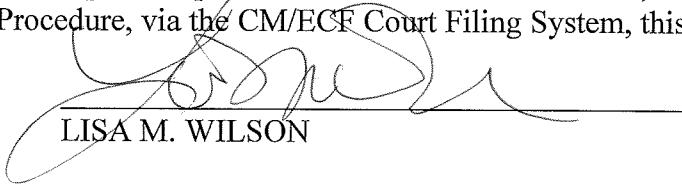
Lisa M. Wilson (TSBN 24013767)
lisa.wilson@wilsonelser.com

**WILSON ELSER MOSKOWITZ
EDELMAN & DICKER, LLP**
901 Main Street, Suite 4800
Dallas, Texas 75202
(214) 698-8000 - telephone
(214) 698-1101 - telecopier

**ATTORNEYS FOR DEFENDANT UNION
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing *Notice of Removal* was duly served upon all persons entitled to receive notice, in accordance with the Federal Rules of Civil Procedure, via the CM/ECF Court Filing System, this 9th day of June, 2017.



LISA M. WILSON